IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3351 of 2004

For Approval and Signature:
***HON'BLE* MISS JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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MUKESHBHAI DALPATBHAI DAVE - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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***Appearance* :**
MR ANAND L SHARMA for Petitioner
MR UR BHATT AGP for Respondent No(s).: 1,2.
MR JB PARDIWALA for Respondent No(s).: 3.
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 04/08/2005

ORAL JUDGMENT

This petition under *Article* 226 of the Constitution of India has been preferred by an Assistant [*Junior Clerk*] serving under the District Judge, Ahmedabad (Rural). By Orders No. A/C : 694/2002 & No. A/C : 696/2002 made on 25th October, 2002, the learned District

Judge sanctioned Higher Grade Scale of Rs. 4000-6000 to the petitioner on and from 5th July, 1999. The said order has not been approved by the District Assistant Examiner, Local Fund Accounts, Ahmedabad under his communication dated 13th February, 2003.

It appears that the petitioner was initially appointed as a Section Writer under the District Judge, Amreli. On conversion of the post of Section Writer to that of Junior Clerk, the petitioner came to be appointed as a Junior Clerk in the pay-scale of Rs. 950-1500 [*pre-revised*] by Order dated 5th October, 1990 made by the learned District Judge, Amreli. Since his appointment as a Junior Clerk, at the request made by the petitioner, by Order dated 28th January, 1997, the petitioner came to be transferred to District Court, Ahmedabad [Rural] on condition, *inter alia*, that he shall take seniority below the junior most temporary Junior Clerk. It is this inter-district transfer which has become the impediment in petitioner's receiving higher grade scale sanctioned by the Order dated 25th October, 2002.

Learned advocate Mr. Pardiwala has appeared for the respondent no.3 and has supported the petition. He has submitted that in view of the settled law, seniority of

a Government servant in a given cadre is not a relevant factor for grant of higher pay scale. He has submitted that the higher pay scale is granted to a Government servant on completion of 9 years' service in the same scale of pay, provided he satisfies the conditions mentioned in the Government Resolution dated 16th October, 1994. In the present case the petitioner has satisfied those conditions. He has passed the Departmental Examinations and is eligible for further promotion. In the submission of Mr. Pardiwala, the petitioner was rightly granted higher pay-scale from the date he completed 9 years' service as a Jr. Clerk in the pay-scale of Rs. 950-1150. He has also submitted that this issue has been settled by several judgments. He has particularly relied upon the judgment of this Court in the matter of **State of Gujarat & Ors. v. Mulchandbhai Lavjibhai Patel & Ors.** [*Letters Patent Appeal No.761 of 2003 :: Decided on 20/12/2003 : Coram*:- **Hon'ble Mr. Justice Bhawani Singh, CJ & Mr. Justice J.N Bhatt, as he then was**].

In above view of the matter and in absence of contest by the State Government, the Revision Application is allowed. The objection raised by the respondent no.2 under communication dated 13th February, 2003 is quashed

and set-aside. The respondents are directed to implement the Orders dated 25th October, 2002 made by the learned District Judge, Ahmedabad [*Rural*] in respect of grant of Higher Grade Scale to the present petitioner. The said orders shall be implemented *within* two months from today. Rule is made absolute in the above terms. The parties shall bear their own cost. *Registry* shall send the *writ* forthwith.

{Miss R.M Doshit, J.}

*Prakash**